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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 HY-LOK U.S.A., INC.,

12 Plaintiff,

13 vs.

14 AVF PROCESS CONTROLS, INC.  
15 AND DOES 1-10, Inclusive,

16 Defendant.  
17

Case No. CV 10-2091-DMG (MANx)

**ORDER RE: STIPULATED  
PROTECTIVE ORDER**

18 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on  
19 the parties' Stipulated Protective Order, filed on June 29, 2010, the terms of the  
20 Stipulated Protective Order are adopted as a protective order of this Court, except to  
21 the extent, as set forth below, that those terms have been modified by the Court's  
22 amendment of Paragraph 10(f) of the Stipulated Protective Order.  
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24 The parties are expressly cautioned that the designation of any information,  
25 document, or thing as Confidential Information does not, in and of itself, create any  
26 entitlement to file such information, document, or thing, in whole or in part, under  
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1 seal. Accordingly, reference to this Protective Order or to the partes' designation of  
2 any information, document, or thing as Confidential Information is wholly  
3 insufficient to warrant a filing under seal.

4       There is a strong presumption that the public has a right of access to judicial  
5 proceedings and records in civil cases. In connection with non-dispositive motions,  
6 good cause must be shown to support a filing under seal. The parties' mere  
7 designation of any information, document, or thing as Confidential Information does  
8 not - - without the submission of **competent evidence**, in the form of a declaration  
9 or declarations, establishing that the material sought to be filed under seal qualifies  
10 as confidential, privileged, or otherwise protectible - - constitute good cause.

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12       Further, if sealing is requested in connection with a dispositive motion or  
13 trial, then compelling reasons, as opposed to good cause, for the sealing must be  
14 shown, and the relief sought shall be narrowly tailored to serve the specific interest  
15 to be protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th  
16 Cir. 2010). For each type of information, document, or thing sought to be filed  
17 under seal in connection with a dispositive motion or trial, the party seeking  
18 protection must articulate compelling reasons, supported by specific facts and legal  
19 justification, for the requested sealing order. Again, **competent evidence**  
20 supporting the application to file documents under seal must be provided by  
21 declaration.

22  
23       Any document that is not confidential, privileged, or otherwise protectible in  
24 its entirety will not be filed under seal if the confidential portions can be redacted.  
25 If documents can be redacted, then a redacted version for public viewing, omitting  
26 only the confidential, privileged, or otherwise protectible portions of the document,  
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1 shall be filed. Any application that seeks to file documents under seal in their  
2 entirety should include an explanation of why redaction is not feasible.

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4 **TERMS OF STIPULATED PROTECTIVE ORDER**

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6 1. This stipulated protective order (the “Stipulated Protective Order”)  
7 shall govern documents, materials, and information, whether oral, written, or  
8 demonstrative produced or otherwise made available by any party or third-party  
9 (“Producing Entity”) to any party (“Receiving Party”) in connection with discovery  
10 in this action (“Discovery Material”), which has been designated as confidential by  
11 the producing party, and shall continue in effect after the conclusion of this  
12 litigation.

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14 2. Discovery Material may only be used and disclosed for the purposes of  
15 this litigation, including appeals, and may not be used for any other purpose.

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17 3. “Confidential Information” refers to Discovery Material that the  
18 Producing Entity in good faith regards as confidential or proprietary or financial  
19 information that it would not ordinarily disclose, is not known to persons outside the  
20 Producing Entity, which the Producing Entity has protected against disclosure, and  
21 which the Producing Entity believes in good faith would harm its competitive  
22 position if it was disclosed without protections. “Confidential Information” includes  
23 any copies or summaries of such information or any materials that reveal the  
24 contents of such information.

25  
26 4. All or any portion of any Discovery Material may be designated as  
27 Confidential Information provided such designation is made in good faith, and, once  
28 designated, such material shall be treated as Confidential Information, under the

1 terms of the Stipulated Protective Order until such designation is withdrawn by the  
2 Producing Entity or by an Order of this Court.

3       5. Documents may be designated as Confidential Information by placing a  
4 stamp on each page that reads "CONFIDENTIAL." Electronically stored  
5 information may be designated as Confidential Information by placing a mark that  
6 reads "CONFIDENTIAL" on the information or media containing the information.  
7 Electronically stored information may be designated as Attorneys' Eyes Only  
8 Information by placing a mark that, in substance, reads "ATTORNEYS' EYES  
9 ONLY" on the information or media containing the information.

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11       6. Deposition exhibits or transcripts, or any portion thereof, may be  
12 designated as Confidential Information by making such a designation on the record  
13 at the deposition or by making such a designation in writing within thirty days of  
14 receipt of the deposition transcript by the Producing Entity.

15  
16       Until thirty days after receipt by the Producing Entity of the deposition  
17 transcript, the entire transcript and all exhibits shall be treated as CONFIDENTIAL.  
18 The party conducting the deposition shall bear the burden of ensuring that the cover  
19 page and any designated portions of the original transcript or any copies of the  
20 transcript bear, in substance, the legend "CONFIDENTIAL - - Subject to Protective  
21 Order".

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23       7. Responses to interrogatories, responses to requests for production of  
24 documents, information or things, and responses to requests for admission, may be  
25 designated as Confidential Information by placing, in substance, the legend  
26 "CONFIDENTIAL," on the first page of such document and on any pages that  
27 contain Confidential Information.

1           8.     In the event that a Producing Entity inadvertently fails to designate any  
2 Discovery Material as Confidential Information, that material shall still be treated as  
3 Confidential Information provided that the Producing Entity provides written notice  
4 to the Receiving Party, as soon as practicable, designating the material as  
5 Confidential Information. Upon receipt of such written notice, the Receiving Party  
6 shall treat the designated material as Confidential Information and shall stamp or  
7 mark it accordingly, or, if the Producing Entity provides correctly designated copies  
8 of the material, destroy the mis-designated material or return it to the Producing  
9 Entity. The Receiving Party shall not be responsible for any use or disclosure of the  
10 mis-designated material prior to receipt of such written notice, provided such use or  
11 disclosure was proper with respect to the material as it was designated at the time.

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13           9.     Any party may dispute the designation of Discovery Material as  
14 Confidential Information, by setting forth the grounds for such dispute in writing to  
15 the Producing Entity. If the dispute cannot be resolved informally among counsel, it  
16 may be submitted to the Court by written motion for resolution. The Producing  
17 Entity shall bear the burden of proof as to the propriety of any designation. Pending  
18 informal resolution by the parties or order of this Court, any disputed information  
19 shall be treated in accordance with its designation by the Producing Entity.

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21           10.    Counsel for the Receiving Party shall not disclose or permit disclosure  
22 of Confidential Information to any other person or entity, except:

- 23               a.     the Receiving Party;
- 24               b.     counsel for the Receiving Party and employees of such counsel;
- 25               c.     consultants or experts employed or retained by the Receiving
- 26 Party to assist counsel in this litigation, and their employees or support staff, to the  
27 extent reasonably necessary to provide such assistance, provided that such  
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1 consultant or expert, or any of their employees or support staff, is not a present or  
2 former employee, officer, or director of a party to this litigation;

3 d. any person called to testify under oath by the Receiving Party in  
4 connection with this litigation, during their testimony, provided they do not retain  
5 copies of such documents;

6 e. a court reporter at a deposition; or

7 f. the Court and court employees.

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9 11. No information may be disclosed to any person in accordance with  
10 subsections (c), (d), or (e) of Paragraph 10 of the Stipulated Protective Order unless  
11 such person has agreed to be bound by the terms of the Stipulated Protective order  
12 by signing the Confidentiality Agreement attached hereto as Exhibit A.

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14 12. If a Receiving Party proposes to file Confidential Information with the  
15 Court (including pleadings, memoranda, or other documents that quote or  
16 summarize such information) if any papers to be filed with the Court contain  
17 protected information, the proposed filing shall be accompanied by an application to  
18 file the papers or the portion thereof containing the protected information (if such  
19 portion is segregable) under seal; and the application shall be directed to the judge to  
20 whom the papers are directed. The Receiving Party shall also file a redacted version  
21 of the motion and supporting papers. All papers that refer to or rely upon such  
22 evidence shall designate the particular aspects that are confidential, so that the  
23 Court, in drafting Orders, to determine whether there is evidence that should not be  
24 specifically identified in the Order(s).

25  
26 13. If any Confidential Information is disclosed to any person other than as  
27 permitted by Paragraph 10 of the Stipulated Protective Order, the party responsible  
28 for the disclosure shall, upon discovery of the disclosure, immediately inform the

1 Producing Entity whose information is disclosed of all facts pertinent to the  
2 disclosure, including the name, address, and employer of the person to whom the  
3 disclosure was made. The party responsible for the disclosure shall take all  
4 reasonable steps to prevent any further disclosure of the Confidential Information.

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6 16. [sic]<sup>1</sup> Within thirty days of the conclusion of this litigation, including any  
7 appeals, each party shall, through its counsel, provide written confirmation to the  
8 Producing Entity that the party has destroyed or returned any and all Confidential  
9 Information, provided that counsel of record for each party may keep a copy of all  
10 pleadings and correspondence in this litigation and any attorney work-product, and  
11 further provided that all retained Confidential Information or shall be treated in  
12 accordance with the terms of the Stipulated Protective Order.

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14 17. Nothing in this Order shall be construed to limit a Producing Entity's  
15 use or disclosure of its own materials.

16  
17 18. If Discovery Material is inadvertently produced that is subject to a  
18 claim of privilege or of protection as attorney work product or trial-preparation  
19 material and the Producing Entity notifies the Receiving Party of the claim and the  
20 basis for it, then: (a) such disclosure shall be without prejudice to any claim of  
21 privilege or protection, (b) the Receiving Party shall not argue that such production  
22 constitutes waiver of any claim or privilege or protection, (c) the Receiving Party  
23 shall promptly return or destroy the material in question and any copies. If the  
24 Receiving Party in good faith disputes the claim of privilege or protection, the  
25 Receiving Party may maintain one copy of the disputed material, provided it  
26 promptly presents the information to the Court under seal for a determination of the

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<sup>1</sup> The Stipulated Protective Order does not include either a Paragraph 14 or 15.

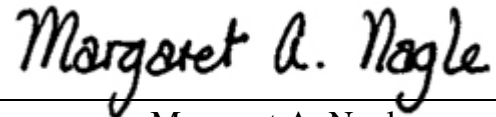
1 claim. If the Receiving Party disclosed the information before being notified, it must  
2 take reasonable steps to retrieve it. The Producing Entity must preserve the  
3 information until the claim is resolved.

4  
5 19. Nothing in this Order shall be construed as authorizing a party to  
6 disobey a lawful subpoena issued in another action.

7  
8 20. Nothing in this Stipulation and Order purports to control or govern the  
9 handling of Confidential Information at the trial of this matter or at other hearings,  
10 which shall be determined by the Court.

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12 **IT IS SO ORDERED.**

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14 Dated: October 6, 2010



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Margaret A. Nagle  
United States Magistrate Judge



**EXHIBIT A**

I have reviewed the Stipulated Protective Order, dated \_\_\_\_\_, 2010 (the "Stipulated Protective Order") in the matter of *Hy-Lok U.S.A., Inc. v. AVF Process Controls, Inc.* I understand that pursuant to the Stipulated Protective Order, information disclosed in this matter through discovery shall be held confidential pursuant to the terms of the Protective Order. I hereby agree to be bound by the terms of the Stipulated Protective Order, including all provisions relating to the treatment of confidential information.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Address: \_\_\_\_\_

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